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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: OFFICE: NEBRASKA SERVICE CENTER

FILE:

FEB 01 2013

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a gold individual retirement account specialist. It seeks to employ the beneficiary permanently in the United States as an "Industrial Engineer/Quantitative Analyst" pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification, certified by the United States Department of Labor (the DOL).

The director determined that the ETA Form 9089 failed to demonstrate that the job requires a professional holding an advanced degree and, therefore, the beneficiary cannot be found qualified for classification as a member of the professions holding an advanced degree. 8 C.F.R. § 204.5(k)(4). Specifically, the ETA Form 9089 requires a United States master's degree or foreign equivalent degree in industrial engineering, business administration, or a related field and 36 months of experience in the job offered. The petitioner noted in response to Part H, Question 8, that an alternate combination of education and experience would be acceptable. This alternate level of education is described in response to Question 8-A as "other" and, in 8-B, the petitioner indicates that it will accept a "Combination of education and experience in lieu of a Master's degree." In response to Question 8-C, the petitioner noted that applicants needed 4 years of experience to fulfill the alternate combination of education and experience indicated in Part H, Question 8. Furthermore, in response to Part H, Question 14, the petitioner stated:

Applicant must have a combination of education and experience equivalent to a Master's degree in Industrial Engineering, Business Administration, or a related field, with strong statistical background and analytical skills with a minimum of three years experience in the financial industry. Excellent writing and communication skills are also necessary. (The three years of experience in the financial industry is a necessity of the business to ensure sufficient exposure to the financial services industry to enable the applicant to perform the required duties effectively. This experience may have been gained either as a part of the degree equivalency or separately.) (The 4 years of experience in Block H.8-C. reduces to 2 years for a Bachelor's degree holder in any of the specified fields.)

The director concluded that the petitioner's response to Questions 8 and 14 lowered the minimum job requirements to below a bachelor's degree plus five years of progressive experience and, thus, disqualified the position for classification as one for an advanced degree professional.

On appeal, counsel asserts that the petitioner requires that an individual filling the offered position of "Industrial Engineer/Quantitative Analyst" possess either a master's degree in industrial engineering, business administration, or a related field and 36 months of experience in the job offered or in the alternate a bachelor's degree in industrial engineering, business administration, or a related field along with 5 years of experience. Counsel contends that the director erroneously denied the petition because the information the petitioner provided at Part H., Question 8-C of the ETA

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Form 9089 does not apply in those cases where the answer provided at Part H, Question 8-A is "other." Counsel states that the fact that the DOL and United States Citizenship and Immigration (USCIS) have different definitions of the number of years of experience required for a master's degree equivalent.

The record shows that the appeal is properly filed and timely. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Here, the Form I-140 was filed on March 23, 2012. On Part 2.d. of the Form I-140, the petitioner indicated that it was filing the petition for a member of the professions holding an advanced degree or an alien of exceptional ability.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The regulation at 8 C.F.R. § 204.5(k)(4) states in pertinent part that "[t]he job offer portion of an individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent of an alien of exceptional ability."

In this case, the job offer portion of the ETA Form 9089 is not consistent with the minimum requirements for classification as a professional holding an advanced degree, and the appeal will be dismissed.

In the instant case, the petitioner specifically states in response to Part H, Questions 8-A and 8-C, that one can qualify for the job without a degree and only 4 years of work experience. Such a combination does not require a professional holding an advanced degree or the equivalent of an alien of exceptional ability, and the appeal must be dismissed. 8 C.F.R. § 204.5(k)(4).

Counsel's statements on appeal have been considered. However, counsel fails to provide any evidence that the information the petitioner provided at Part H., Question 8-C of the ETA Form 9089 does not apply in those cases where the answer provided at Part H, Question 8-A is "other" or that the DOL and USCIS have differing definitions of the number of years of experience required for a

master's degree equivalent. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The beneficiary was not required to have any degree and is only required to have 4 years of experience on the ETA Form 9089. The petitioner's actual minimum requirements might have been clarified or changed before the ETA Form 9089 was certified by the DOL. Since that was not done, the director's decision to deny the petition must be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.